

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANCISCO MERINO,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

No. 2:22-cv-01132-DAD-DMC (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
DEFENDANTS' MOTION TO DISMISS

(Doc. Nos. 27, 30)

Plaintiff Francisco Merino is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 15, 2024, the assigned magistrate judge issued findings and recommendations recommending that defendants' motion to dismiss (Doc. No. 27) be granted and that plaintiff's first amended complaint ("FAC") be dismissed, with leave to amend, due to plaintiff's failure to allege facts sufficient to support his Eighth Amendment claims. (Doc. No. 30.) In particular, the magistrate judge found that plaintiff's FAC contained "legally conclusory statements that are not supported by factual details" and failed to allege "specific, supporting facts that would show a deliberate delay or interference in medical treatment." (*Id.* at 4, 6.)

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1 The pending findings and recommendations were served on plaintiff and contained notice
2 that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 7.) On
3 September 3, 2024, plaintiff filed objections to the pending findings and recommendations. (Doc.
4 No. 31.)

5 In plaintiff's objections, he argues that defendants Arya and Shagufta "intentionally
6 ignored [him] and [his] medical problems" and did not "perform their medical duties in time."
7 (*Id.* at 3.) He argues that this was due to their personal dislike of him. (*Id.* at 4.) Plaintiff also
8 informs the court of his various medical problems and represents that they are still ongoing. (*Id.*
9 at 5–8.) However, nowhere in plaintiff's objections does he meaningfully respond to the
10 magistrate judge's finding that his FAC does not include allegation of specific facts to support
11 that there was a deliberate delay of his medical treatment or an interference with his medical
12 treatment.¹ Accordingly, the court finds that plaintiff's objections do not present a basis upon
13 which to reject the magistrate judge's findings and recommendations.

14 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
15 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
16 findings and recommendations are supported by the record and by proper analysis.

17 Accordingly,

- 18 1. The findings and recommendations issued on August 15, 2024 (Doc. No. 30) are
19 adopted in full;
- 20 2. Defendant's motion to dismiss (Doc. No. 27) is granted;
- 21 3. Plaintiff's first amended complaint is dismissed, with leave to amend;
- 22 4. Within thirty (30) days from the date of this order, plaintiff may file a second
23 amended complaint;
- 24 5. Plaintiff is advised that his failure to file a second amended complaint within the
25 time provided may result in the dismissal of this action; and

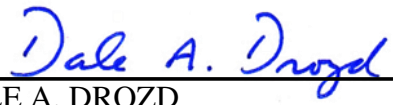
26 /////

27 ¹ In any second amended complaint he elects to file plaintiff is advised that he should allege any
28 additional facts addressing this deficiency if he is able to do so.

6. This action is referred back to the assigned magistrate judge for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated: November 8, 2024



DALE A. DROZD
UNITED STATES DISTRICT JUDGE